IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 395 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

NIRMALA BAKUBHAI FOUNDATION

Appearance:

MR MANISH R BHATT for Petitioner

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Revenue, Income Tax Appellate Tribunal has referred following question of law for opinion of this Court in respect of Assessment Year 1983-84 :

"Whether, the Appellate Tribunal is right in law and on facts in directing the Income tax Officer to treat the donation of Rs. 1,50,000/- as proper application of income under section 11 of the Income tax Act ?"

2. It was claimed by the assessee that out of its income for the year under consideration, an amount of Rs. 1,15,000/- was applied to the objects of the Trust and payment of the amount for the purposes of development and maintenance of B.M.Institute should be allowed. The Income Tax Officer disallowed contribution of Rs. 1,50,000/- made by the assessee to B.M. Institute. C.I.T. (Appeals) granted allowance as claimed by the assessee and the Tribunal has confirmed the decision of the C.I.T. (Appeals).

3. We have heard the learned counsel for the parties. The learned counsel for the parties state at the Bar that the controversy raised in the present Reference is concluded by the Division Bench of this Court in Commissioner of Income Tax v. Nirmala Babubhai Foundation, (1997) 226 ITR 394. In the said case also the assessee which was a trust, had made contribution to B.M.Institute and the High Court has upheld the assessee's claim for exemption under section 11 of the Income Tax Act, 1961. In view of the decision referred to above, the Reference is answered in favour of the assessee and against the Revenue. The Reference accordingly stands disposed of, with no order as to costs.

(J.M.Panchal,J.) (M.S.Shah, J.)